

341.6
H874p
cop. 1

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

AN ADDRESS

BY

HONORABLE CHARLES E. HUGHES

SECRETARY OF STATE OF THE UNITED STATES

DELIVERED BEFORE THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

AT

WASHINGTON, D. C., APRIL 27, 1923



RECEIVED
FEB 22 1924

WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

Return this book on or before the
Latest Date stamped below.

Theft, mutilation, and underlining of books
are reasons for disciplinary action and may
result in dismissal from the University.

University of Illinois Library

MAY 24 1966

JUN 21 1967

L161—O-1096

LIBRARY
BUREAU OF LEGAL
AFFAIRS

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

AN ADDRESS

BY

HONORABLE CHARLES E. HUGHES

SECRETARY OF STATE OF THE UNITED STATES

DELIVERED BEFORE THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

AT

WASHINGTON, D. C., APRIL 27, 1923

Y B A 0 3 . . .
/ 0 1 5 1 1 5 0 Y / 0 8 3 3 / 0 0
L 0 0 5 0 6 0 0



341.6
H874p
cop 1

THE PERMANENT COURT OF INTERNATIONAL
JUSTICE.

It is my purpose to discuss in the simplest manner the proposal made by the President that the United States should participate, upon stated conditions, in the support of the Permanent Court of International Justice. In making this proposal, the President has been animated by the desire to promote world peace and stabilization; he has sought to give effect to a long cherished American aspiration and to pursue in the projected course the clear line of our traditional policy. With full appreciation of the intensity of feeling aroused by the controversy of recent years we can not fail to realize the importance of having the subject considered upon its merits and the supreme need is an understanding of the facts which should remove uncertainty and quiet apprehension.

Let it first be noted exactly what the proposal is and what it is not. As the President has explicitly stated, it is proposed to support the Permanent Court of International Justice; it is not proposed to enter the League of Nations. Those who desire that by this method the United States shall become a member of the league are indulging vain hopes, and those who are alarmed at such a possibility are entertaining vain fears. The test is a clear one. If the Senate should approve the President's recommendation, the United States would still be outside the league. Acceptance of the President's proposal as to the International Court will not obtain for the United States a single right or subject it to a single obligation under the covenant of the league.

These are the questions in which I assume the citizens of the United States are interested:

Is it a good thing to have an international court?

Why should we have a permanent court instead of temporary arbitral tribunals?

Is the Permanent Court of International Justice established on a sound basis?

Is there any good reason why the United States should not support it?

First. Why should there be an international court? The manifest answer is that there are controversies between nations which should be decided by a court. There are controversies calling for the examination of facts and the application of principles of law.

There are international contracts or treaties, now more numerous than ever, to be interpreted. Recognizing the distinction between questions of a legal nature and questions of policy, there has emerged from the discussions of jurists an agreement defining justiciable disputes as those which relate to the interpretation of a treaty, to any question of international law, to the existence of facts which would constitute a breach of an international obligation or to the reparation to be made for such breaches. Other questions may be submitted for decision, but questions of the sort above described are manifestly of the same character as those which in all civilized countries are recognized as matters for determination by judicial tribunals whose impartial judgment affords the nearest human approach to absolute justice.

It is to the direct interest of the United States, with respect to the disposition of its own controversies, that the best practicable method of judicial settlement should be provided. We have rights and duties under international law. We are parties to treaties under which we have rights and obligations. As we can not be the final judge in our own cases, we need the best possible international tribunal to decide them. This is to the interest of every American citizen. It is also to the interest of the United States that controversies between other nations to which the United States is not a party should be appropriately determined. Suppose a citizen of New York should say that he was interested only in having a judicial tribunal to determine controversies between States to which New York was a party, but that it made no difference to him what happened if the question was between Missouri and Kansas. Every citizen knows that it is in the interest of domestic peace that we should maintain a tribunal by which controversies arising between any two States can be determined. It is equally essential to world peace that controversies not our own should be peacefully and impartially determined wherever that is possible. As President McKinley said, "It has been recognized as the leading feature of our foreign policy throughout our entire national history" that there should be "the adjustment of difficulties by judicial methods rather than by force of arms."

How are controversies between nations to be determined? If the nations are able to agree, the question does not arise. But what shall be done if they can not agree? Is their controversy to remain a festering sore? Ultimately, the alternative to peaceful settlement is the arbitrament of force. The only way to prevent war is to dispose of the causes of war and the desire for peace must be supported by the institutions of peace.

Because a court may not be able to deal with every sort of controversy but only with controversies that are appropriate for a court to decide is no reason for dispensing with it. There is no

immediate access to the millennium and a demand for the millennium will not prevent war. If the plain path of progress in dealing with those controversies which all countries recognize to be susceptible of settlement through judicial tribunals is not to be followed, then no progress is possible.

Second. Why should there be a permanent court instead of temporary arbitral tribunals?

The principle of judicial settlement of international disputes has been applied from early times through arbitrators. It is a method of great value and I have no desire to underestimate it. We have been parties to more than 70 arbitrations and we have concluded a score of general arbitration conventions. Throughout its history the United States has consistently supported this sort of judicial process, but we have long recognized that it leaves much to be desired.

Arbitrators are selected to determine a particular controversy, and after the controversy has arisen. When the decision has been made the arbitral tribunal ceases to exist. There is unnecessary expense in the creation of a separate tribunal for every case and there is a regrettable loss in the experience of judges because of the lack of continuity in service. For the same reason, the development of the law suffers, as, instead of a series of decisions with appropriate relation to each other by a permanent bench of judges, thus gradually establishing a body of law, there are sporadic utterances by temporary bodies disconnected with each other, acting under different conditions, and having a widely different capacity.

There is a still more serious defect in this process. The arbitral tribunal is composed of those specially selected by the parties to the dispute. In legal matters of minor consequence, where national interest is relatively small, judicial standards are more readily maintained. But where the controversy is a serious one and success is highly important, the constitution of a tribunal after the controversy has arisen is not favorable to the selection of those who will act solely as impartial judges. And those members of the tribunal who are the separate choice of each party tend to become advocates rather than judges; if this is not always the case in fact, it is generally so in public estimation.

There need be no illusion as to this matter. The question finally comes to the selection of the umpire, or third or fifth arbitrator, as the case may be, who is likely to have the deciding vote. The smaller Powers have the less difficulty in making such a choice. They have a range of selection that is generally satisfactory from the standpoint of national interest and they often are able to agree upon a tribunal composed of a single arbitrator. When there is a serious controversy between great Powers, however, the choice of an umpire

or third arbitrator is far from easy. National interests are far-reaching, and a selection satisfactory to one Power is for the same reason the subject of objection by the other. The difficulty has been vastly increased by the feelings engendered and the alignment of sympathies in the Great War. It has become the practice to provide that, in case of a failure of the parties, or of the arbitrators respectively selected by them, to agree upon an umpire or third arbitrator, he shall be selected by some designated Power or Powers. This is because some means of choice must be provided if the parties can not agree, but this course places with the designated Power or Powers the virtual control of the final constitution of the tribunal. The alternative is to have the selection determined by lot, and certainly this is not a satisfactory method.

Even where the parties are able to agree upon the arbitrators, there still remains the danger that considerations of political expediency will usurp the place of judicial standards. I would not disparage the motives of arbitrators or the importance of their service, but as Mr. Root has well said, they too often "consider themselves as belonging to diplomacy rather than to jurisprudence; they measure their responsibility and their duty by the traditions, the sentiments, and the sense of honorable obligation which has grown up in centuries of diplomatic intercourse, rather than by the traditions, the sentiments, and the sense of honorable obligation which characterizes the judicial department of civilized nations." The process tends to the intrusion of political interest and to a solution by compromise instead of a proper judicial determination. Questions of right come to be determined as questions of policy.

The problem in the improvement of the judicial process in international relations is to secure immunity, so far as is humanly possible, from considerations of political interest and policy and to have the rights and obligations of nations determined upon their merits. The United States has taken the lead in the endeavor to secure this result by the most appropriate method, that is, by the establishment of a permanent international court.

Secretary Hay instructed the American delegates to the First Hague Conference in 1899 to present a plan for an international tribunal of a permanent character. While this project was not adopted, the conference did make a decided improvement in existing practice by providing a code of arbitral procedure and an eligible list of arbitrators from which tribunals might be constituted for the determination of such controversies as the parties concerned might agree to submit to them. This was called a Permanent Court of Arbitration but it was not in fact a permanent court; it was a panel of arbiters. This Government still cherished its ideal and hence, at the Second Hague Conference, our delegates were instructed

by Secretary Root to bring about "a development of the Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility."

Mr. Choate, as the first delegate of the United States, in presenting to the conference the American plan for a permanent court quoted the words of President Roosevelt that he hoped "to see the Hague court greatly increased in power and permanency, and the judges, in particular, made permanent and given adequate salaries so as to make it increasingly probable that in each case that may come before them they will decide between the nations, great or small, exactly as a judge within our own limits decides between the individuals, great or small, who come before him."

Mr. Choate observed that the work of the First Conference, noble and far-reaching as it was, had not proved entirely adequate to meet the progressive demands of the nations, and to draw to the Hague Tribunal for decision any great part of the arbitrations that had been agreed upon; and that in the eight years of its existence only four cases had been submitted to it, and of the 60 judges, more or less, who were named as members of the court at least two-thirds had not as yet been called upon for any service. He found the reasons to lie in undue expense; in the fact that there was "nothing permanent or continuous or connected in the sessions of the court;" that it had "thus far been a court only in name—a framework for the selection of referees for each particular case, never consisting of the same judges." "Let us then," said he, "seek to develop out of it a permanent court, which shall hold regular and continuous sessions, which shall consist of the same judges, which shall pay due heed to its own decisions, which shall speak with the authority of the united voice of the nations, and gradually build up a system of international law, definite and precise, which shall command the approval and regulate the conduct of the nations."

Mr. Choate added that the plan proposed by the American delegates did not "in the least depart from the voluntary character of the court already established. No nation can be compelled or constrained to come before it, but it will be open for all who desire to settle their differences by peaceful methods and to avoid the terrible consequences and chances of war." With solemn emphasis, disclaiming any pride of opinion as to any point or feature of the American plan, he warned the great gathering of the representatives of all the nations that it "would be false to its trust and would deserve that the seal of condemnation should be set upon its work"

if it did not "strain every nerve to bring about the establishment of some such great and permanent tribunal."

While the Second Hague Conference discussed a project and recommended a draft convention for the establishment of a Permanent Court, it was unable to find a satisfactory method of selecting the judges, and for this reason the project failed. Still the American delegates reported to their Government that in the proposed project the foundations of a permanent court had been broadly and firmly laid, and added—"a little time, a little patience, and the great work is accomplished." Echoing the same sentiment, President Roosevelt said in his next message to the Congress: "Substantial progress was also made toward the creation of a permanent judicial tribunal for the determination of international causes." He regarded the unsettled question as to the method of selecting judges as "plainly one which time and good temper will solve."

The establishment of a permanent court of international justice continued to be a cardinal feature of American policy.

Third. Is the present Permanent Court of International Justice, to which the President's recommendation refers, established on a sound basis?

This question invites consideration of its ~~organization~~; of the extent to which the court has the support of the nations; of the jurisdiction and standards of the court; and of the qualifications, tenure, method of selection, and independence of the judges composing it.

The Permanent Court of International Justice has been established under what is called a statute, or constitution, which defines its organization, jurisdiction, and procedure. In the preparation of this statute the council of the league called to its aid an international committee of the most distinguished jurists, among whom was Mr. Root. This Advisory Committee of Jurists formulated a plan for a permanent court. The plan was considered and amended in the council and assembly of the league, but its main structure was retained. While the amended plan was adopted by the assembly of the league, it could not be put into effect by action of the league. In view of the scope of the plan, it was necessary to have a special international agreement on the part of the States which were willing to accept it. Accordingly a special protocol or agreement, with the statute of the court annexed, was drawn up and sent to the nations for approval. I understand that about forty-six States have signed this special agreement, and of these about thirty-four States have already ratified it.

The permanent court is thus an establishment separate from the league, having a distinct legal status created by an independent organic act.

The jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.

Careful provision has been made to secure the independence of the court and to safeguard the appropriate discharge of its functions as a judicial body in accordance with accepted judicial standards. The statute of the court provides that it shall be composed "of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law." The court consists of 15 members—11 ordinary judges and 4 deputy judges. The 11 judges constitute the full court, but if they can not all be present, the deputy judges may be called on. Nine constitute a quorum. The court is thus large enough to be appropriately representative and at the same time is not so large that it can not effectively transact its business.

The judges are elected for nine years and are eligible for reelection. Every judge before taking up his duties must make a solemn declaration in open court that he will exercise his powers impartially and conscientiously. The ordinary members of the court may not exercise any political or administrative function. This provision applies to the deputy judges during the time that they are performing their duties on the court.

No judge can be removed by the League of Nations. A judge can not be dismissed unless, in the unanimous opinion of the other members of the court, he has ceased to fulfill the required conditions. This gives the judges absolute security in the impartial performance of their duties.

The statute provides that in deciding cases the court shall apply international conventions establishing rules expressly recognized by the contesting States; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; and the judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. All questions are decided by a majority of the judges present, and in the event of an equality of votes, the President or his deputy, who are elected by the court itself, shall have a casting vote.

The judgment of the court is to be final and without appeal. It is expressly provided, however, that the decision of the court shall have no binding force except between the parties and in respect of the particular case decided.

As already observed, the Hague project of 1907 for the establishment of a permanent court failed because it was found to be im-

possible to agree upon the method of selecting the judges. Manifestly, if the nations are to participate in maintaining an international court they must have suitable opportunity to participate in the election of those who compose it. Still, to have every nation represented upon such a court, or to have a selection of a permanent body of judges according to nationality, would be wholly impracticable, and insistence upon such a course would make impossible the establishment of a permanent court. The fundamental postulate of international law is the equality of States, but if this principle alone is observed and all States should join in the election of judges precisely upon the same footing, the small powers would have a great majority and would control the election. Even though the jurisdiction of the court was not compulsory, a court thus constituted would not be likely to enjoy the confidence of the great powers. At least, the fear of such an arrangement has been until now an insuperable obstacle in establishing an international court.

This difficulty has been surmounted by providing that the two groups of Powers in the council and assembly of the league shall act concurrently in the election of judges. The council is a small body, of ten members, and the great Powers—Great Britain, France, Italy, and Japan—are permanent members, the others being non-permanent members. The assembly, on the other hand, embraces all the members of the league, fifty-two in number. The statute of the court provides that in electing the judges each of these bodies shall proceed independently, and the successful candidate must have a majority of the votes in each. The result is that the great Powers are able to vote in a small group, of which they are permanent members, while all the smaller Powers can vote in the other group. In this way the great Powers and the smaller Powers have a check upon each other, and it is as certain as anything human can be that their concurrent action will result in the election of impartial judges.

It should be noted that the council and assembly, in electing judges, do not act under the covenant of the League of Nations. That covenant, which determines the rights and obligations of members of the league, invests them with no authority whatever for such action. The election is held under the provisions of the statute of the court which rests, as I have said, upon a special international agreement. For this purpose, the council and assembly are electoral bodies which are utilized because they are groups of States and through provision for their concurrent action the difficulty of finding a satisfactory basis of selection has been overcome.

This suggestion was brought forward by Mr. Root in the Advisory Committee of Jurists. Analogy was found in the plan which made possible our organic Union, by providing for the representa-

tion of sovereign States in the Senate and of the people in the House of Representatives and requiring in the enactment of laws the action of both groups. The method of electing judges for the permanent court is thus a practical solution, and I think it may be said that without a solution of this sort which will enable great Powers to have a check upon the smaller Powers, and the latter to have a check upon the former, a permanent court can not be established. We are generally in danger, in all efforts at progress, of being balked by an impractical idealism; in this case it is fortunate that a wise practicality has enabled the nations to attain the ideal of an impartial court.

It should be added that candidates for election are nominated by national groups of arbitrators who are on the panel established by The Hague Convention and the election is made from the candidates presented by these groups, except that, in case of inability otherwise to agree, a joint conference of representatives of the council and assembly may unanimously present another name to each body. These national groups who thus have the privilege of nominating candidates for the Permanent Court of International Justice are selected by the Governments, respectively, under the Hague Convention as men of known competency in questions of international law and of the highest moral reputation. Before making these nominations, each national group is recommended by the statute of the court to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law. Thus the participating nations have the opportunity to submit the names of their leading jurists.

The plan gives every assurance against a successful attempt by any *bloc* to manipulate or control the elections. Any such attempt in the assembly would meet with the greatest difficulty in view of its 52 members and their diverse interests, while any effort on the part of the council to elect a judge partial to particular interests would be wrecked in the assembly. It is wholly improbable that acting in this way the participating nations would be able to agree upon judges unless they were men of acknowledged merit with a public reputation affording the best possible guaranty of competence and impartiality.

The judges chosen through the concurrent action of these groups will be in all probability, as in the case of those already elected, men of mature years, who have won high distinction. They are elected for nine years and will most probably be reelected if they give faithful service. This means that men of exceptional experience and recognized fitness for these most important posts are chosen at a time of life, and for a term of service, which leaves them no motive but to devote the rest of their career to making efficient the adminis-

tration of international justice to the full extent of their ability. If there is any practicable plan better safeguarding the essentials of an international court it has never been suggested.

In considering the question of the relation of the court to the league, it must be remembered that if there were no league, you would still have to deal with the States composing the league. If you are to have a permanent court these States should participate in establishing it and maintaining it and in electing its judges. The question would still remain—whether all these States in choosing judges should act in one body or group, whatever you might call it, or not. If it were insisted that they should act in one body upon precisely the same footing, we should return to the old difficulty and get no court at all. If, on the other hand, you say that the participating States should act in two bodies or groups, so that the great powers may have a check upon smaller powers and the latter upon the former, then the question is, What should the second body or group be? Whatever you call it, it would be a body or group in which the great powers would presumably be permanent members.

The fundamental question is whether the League of Nations controls the court. To this there is a ready answer. The league does not control the court; that is an independent judicial body. The league is composed of States; they, of course, continue to exist as States. When the league acts, it acts under the covenant which creates the rights and obligations pertaining to the league. But when these 52 members act in separate groups to elect judges, they are, as I have said, not acting under the covenant, but are following a course of procedure defined by a special international agreement in order to secure the independent and impartial judicial body for which the world has been waiting.

There are certain other provisions of the statute of the court which have been adopted to meet obvious practical exigencies. Only one national of a participant in the election can be chosen as a judge. Judges of the nationality of each contesting party retain their right to sit in the case before the court. If the court includes upon the bench a judge of the nationality of one of the parties only, the other party may select from among the deputy judges a judge of its nationality if there be one, or, if not, the party may choose a judge. If the court includes upon the bench no judge of the nationality of the contesting parties, each may choose a judge. If there are several parties in the same interest they are to be reckoned, for the purpose of these provisions, as one party only.

The court recognizes that it may be called upon by the council or assembly of the league for advisory opinions. This is a practice similar to that which has obtained in most of the States of New England from colonial days. It now obtains in Massachusetts,

New Hampshire, Maine, Rhode Island, Florida, Colorado, and South Dakota. The Permanent Court of International Justice has adopted rules upon this subject so as to assimilate the process so far as possible to a judicial proceeding and especially so as to exclude any supposition that advisory opinions may be rendered in a diplomatic sense and without publicity. (See article by Judge John Bassett Moore on the Organization of the Permanent Court of International Justice, *Columbia Law Review*, Vol. XXII, No. 6, June, 1922, pages 11 and 12.)

The conclusion is that while the United States should have the right to participate in the election of judges if it is to support the Permanent Court, that court is established on a sound basis. It is already functioning. The judges have been elected—a most distinguished American jurist being one of them—and they are as representative a body of independent and qualified jurists as could be chosen.

Fourth. I come then to the final question: Is there any good reason why the United States should not support the Permanent Court? This support has been proposed by the President upon four explicit conditions. These conditions are:

I. That such adhesion shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the covenant of the League of Nations constituting Part I of the treaty of Versailles.

II. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States' members, respectively, of the council and assembly of the League of Nations in any and all proceedings of either the council or the assembly for the election of judges or deputy judges of the Permanent Court of International Justice, or for the filling of vacancies.

III. That the United States will pay a fair share of the expenses of the court as determined and appropriated from time to time by the Congress of the United States.

IV. That the statute for the Permanent Court of International Justice adjoined to the protocol shall not be amended without the consent of the United States.

The acceptance of these conditions will establish that the support of the court will not involve entry by the United States into the League of Nations; the participation of the United States in the election of judges; the bearing by the United States of its proper share of the expenses of the court; and, finally, a safeguard against any change in the statute of the court without the assent of the United States.

What, then, are the objections to support of the court upon this basis?

(1) It is objected that it is not a world court. But in what sense is it not a world court? Is reference made to the number of nations which support it? The answer is, as I have already said, that about 46 nations have already signed the protocol, and if the United States adheres, there is every reason to suppose that participation by the other nations will be brought about. This should be our aim. It is not too much to say that there will be no world court if this court can not be made one, and whether or not it is to be in the fullest sense a world court depends upon our own action.

Suppose we should now undertake to establish another world court? What should we do? We could not establish it by ourselves; we should have to prepare a plan and submit it to the other nations. We should need the approval of the nations who have already approved the present plan.

What differences should we propose, so far as the structure of the court is concerned? With respect to the choice of judges, would we endeavor to have a practicable plan or one that had been demonstrated to be impracticable? Should we insist that all nations be represented on the court by their nationals, or that all nations, great and small, should act together in the choice of judges upon precisely the same footing and without any division into groups which could form a check upon each other? If so, we should have a plan which would most probably fail of acceptance, and at the same time would not safeguard the interests of the United States nearly as well as the existing plan. Should we recommend concurrent action by groups of nations, in order to have a practical arrangement for selecting judges? If so, what groups should we propose, and how would they differ essentially from the present electoral bodies? The more the matter is examined, the more clearly I think it will appear that the suggested changes would be purely formal, and not at all vital to our interests, or of a character which would disclose any just reason for refusing support to the existing court and for entering upon the difficult, if not vain, endeavor of establishing another judicial institution.

(2) Another objection is that the court has been established through the action of the League of Nations. This is not an entirely accurate statement, for the action of the league could not have established the court. It was necessary to have a special agreement signed or adhered to by the nations which support the court, and the court rests upon that agreement. The substantial point, however, is not the source of the plan but its character. Any nation, or any group of nations, might have suggested the plan and it might be none the worse or none the better for that. The question still remains—What is the court that has thus been established, and is it in its essential attributes worthy of support?

This question I have examined, and I think it is demonstrable that the court is an independent judicial body with appropriate judicial functions and abundant safeguards for their proper discharge. It is not a servant of the league; and its decisions are not supervised or controlled by the league.

It is said that the salaries and expenses, or budget of the court, are fixed by the assembly of the league upon the proposal of the council. But the action of the assembly is the action of the 52 members composing the assembly and the recommendation of the council is the recommendation of the States composing the council, in each case the action being taken under the statute of the court. If the nations are to support a court, they must of course have some practical means of dealing with the budget. Under the present plan, by which both these groups act, there is abundant protection against extravagance. We properly reserve the right of Congress to determine by its appropriation the amount which the United States shall pay as its share. I find nothing which can be regarded as inimical to the interests of the United States in the provisions as to procedure.

(3) But it is said that support of the court, although it manifestly does not involve entrance into the league, or the assumption of any obligation under the covenant of the league, constitutes an entanglement. But in what do we become entangled? Are we to abandon the effort to dispose of international controversies by judicial settlement, which has been a feature of American policy since the foundation of the Government? We can not have an ordinary arbitration unless we have an international agreement and an international tribunal for the purpose of the arbitration. We have never considered this to be an entanglement. We have manifested our desire for such judicial settlements by numerous treaties and special conventions.

Certainly we do not object that the disputes of others should be settled peacefully by similar methods. Then, as I have shown, the establishment of a permanent court has been an American policy because we have desired this essential improvement in judicial process in international relations. Political platforms have treated this as an American policy and not as a forbidden entanglement. If you are to treat participation in a permanent court of international justice as an entanglement foreign to our institutions, you must rewrite American history. If you are not, then the question is as to this particular permanent court and we return to the consideration of its organization and functions, and these justify the conclusion that it is an independent judicial body of the highest character and deserves our confidence.

(4) Again it is objected that a world court should have compulsory jurisdiction and that the jurisdiction of the Permanent Court of

International Justice is not compulsory. It may be noted that provision is made in the statute of the court for the acceptance by States, through a special agreement, of compulsory jurisdiction of legal disputes as defined in the statute. I understand that of the 46 States that have signed the protocol about 15 have ratified this optional clause for compulsory jurisdiction, but among the majority of the States which have not assented to the optional clause are Great Britain, France, Italy, and Japan. It is apparent that the greater nations are not yet ready to accept compulsory jurisdiction even of the limited class of questions above described. Certainly, it does not appear that the United States is ready to accept it.

The American plan for a permanent court, which was submitted to the Second Hague Conference, was, as Mr. Choate pointed out, for a jurisdiction of a voluntary character. The Senate repeatedly, from the days of President Cleveland, has refused to sanction an arbitration treaty providing for compulsory arbitration. It has been required that, even under our general arbitration treaties relating to legal disputes, there should be a limitation relating to questions which affect the vital interests, the independence, or the honor of the two contracting States, and the Senate has insisted that a special agreement for each particular arbitration should be submitted for its assent.

Shall we postpone the plan for a world court because we can not have compulsory jurisdiction? Can we not make substantial progress in the judicial process by the creating of a tribunal which in the highest degree will command confidence and to which the nations may present their cases for the most impartial and expert consideration that is obtainable? Why should impossibilities be demanded if we are really interested in judicial settlement? It is said that the court is substantially an arbitral tribunal because of the absence of compulsory jurisdiction. But this is not an effective argument, for even if the court could be so described, the question would remain; why should we not have the great advantage of this improvement in the judicial mechanism? This brings us back to the question whether or not we desire a permanent court with the continuous service of judges with appropriate judicial standards instead of temporary arbitral tribunals—a question to the affirmative answer of which we have long been committed.

(5) Further, it is objected that no provision is made for the enforcement of the decisions of the court. There are those who desire to see an international armed force to compel the carrying out of decisions. Those who make this demand generally assume that there will be substantial unity among those furnishing the armed force so that it can be used. But when there is such international unity the power of public opinion is at its maximum and there is the least

need for force, while in the absence of such unity the armed force is likely to remain unused.

The truth is that the decisions of the court will have the most solemn sanction that it is practicable to obtain. When nations agree to submit a dispute to a tribunal and to abide by the decision, its observance is a point of international honor of the highest sort. You can really have no better sanction than this and the obligation is one which will be all the more keenly felt when the decision is not simply that of a temporary arbitral tribunal but of a permanent court supported by practically all the nations of the world. If you desire to improve the authority of judicial determinations of international disputes, you can best effect this object by improving the reputation for impartiality, and for disinterested judicial consideration, of the tribunal that decides them.

(6) An objection of a different character is that the United States should unconditionally support the court, and therefore, apparently, that the suggested conditions should be withdrawn. This objection simply means that the United States should enter the League of Nations, as the objection assumes, in accordance with the fact, that the proposed support of the court does not involve entry into the league. But why, in supporting an institution which embodies a cherished ideal of the American people, should we revive the controversy over the league? Why should we not support the court as a judicial body? In giving this support, however, it is important that we should reserve the right to participate in the election of judges, that we should protect ourselves against amendment of the statute without our consent, and that we should provide for the determination by Congress of the amount to be paid as our share of the expenses. The stipulated conditions are appropriate to the purpose.

(7) Another objection is that the British Empire has six votes in the assembly of the league in the election of judges, because the Dominions and other constituent parts of the Empire are members of the assembly. It must be remembered, however, that there are 52 votes in the assembly. The admission to membership of these parts of the British Empire has been a recognition of the aspiration of the peoples composing them, and this has not been found an insuperable obstacle to the support of the court by other Powers. And it would be difficult to find a sound reason for objection on the part of the United States to this increase on natural grounds in the voting strength of the peoples who have been developed under the influence of Anglo-Saxon jurisprudence.

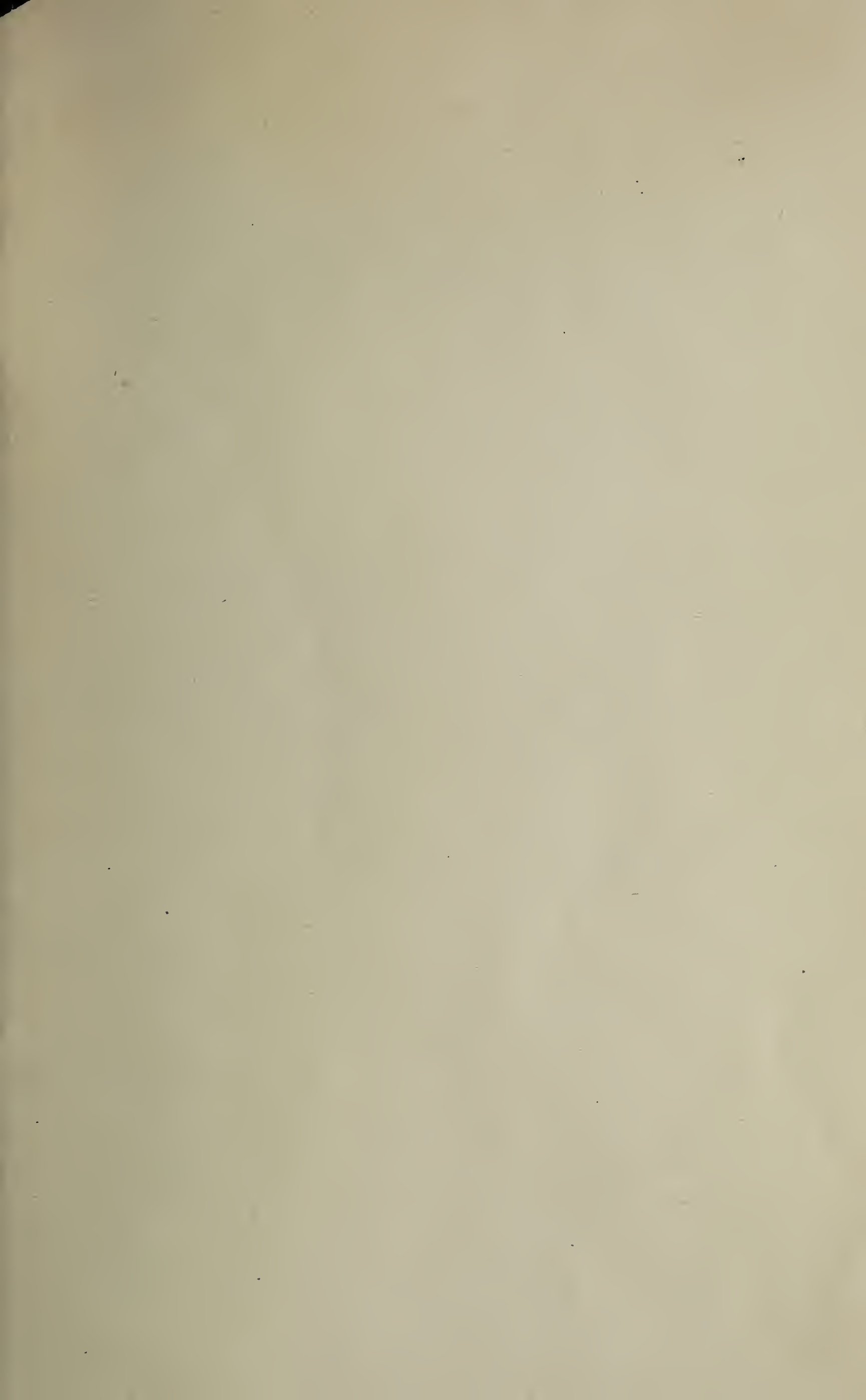
Moreover, under the proposed condition the United States will not only participate in the election by the assembly, but also in the

election by the council, and in the council the British Empire has but one vote. We are far better protected by this arrangement than by one which would have all States vote together on exactly the same footing and where the smallest nation would cast the same vote as the United States. The arrangement for our participation in the voting for the judges by the council is really a stronger protection to the interests of the United States than has hitherto been suggested in any plan for a permanent court. The question should also be considered in the light of the nature of the action that is involved. It is practically impossible, under the scheme that has been adopted, for the British Empire, or for any combination, to secure an election of judges in aid of a particular political interest. Such an effort would die stillborn, because of the necessity for a concurrent choice by both groups of nations in the manner that has been devised.

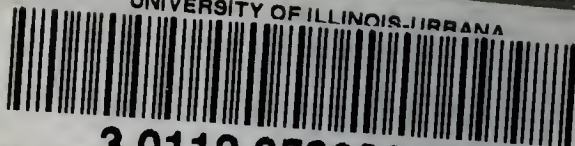
Finally, it is hardly necessary to say that I am in entire sympathy with efforts to codify international law and to provide conventions for its improvement. I believe in conferences for that purpose. We have already made some progress in this direction through the recent Commission of Jurists which sat at The Hague to suggest modifications in the laws of war which are made necessary by new agencies of warfare—a commission established under a resolution adopted at the Conference on Limitation of Armament. However, the process of codifying, clarifying, and improving international law is necessarily a slow one, and if we wait for a satisfactory body of law before we have a permanent court a generation will pass before it is established. Meanwhile let us supply appropriate means for the application of the law we have. The two projects are not inconsistent; the one can exist along with the other.

But we have an acute world need. We shall make no progress toward the prevention of war if we adopt a perfectionist policy. Whatever else we should have, we need at once a permanent court of international justice. No plan to promote peace can dispense with it. Why should we wait for the solution of difficult problems of policy and the settlement of the most acute international controversies of a political nature before we meet the obvious necessity of providing for the appropriate disposition of those controversies with which an international court is competent to deal?

Any successful effort to settle controversies aids in the cultivation of good will and the desire for the adjustments of amity. The support of a permanent court as an institution of peace will be a powerful influence in the development of the will to peace. I hope that the United States, in deference to its own interests and in justice to its ideals, will do its part.



UNIVERSITY OF ILLINOIS LIBRARY



3 0112 059093044

LIBRARY
UNIVERSITY OF ILLINOIS
CHICAGO